

Table of Contents	Parental Consent Not Required	2
	Video Surveillance of Special Education Settings.....	2
	Classroom or Other Setting	2
	Definitions	2
	Administrative Coordinator	4
	Authorized Requestors	4
	Video Camera Coverage	5
	Written Notice.....	5
	Retention Period.....	6
	Gifts, Grants, and Donations	6
	No Waiver of Immunity	6
	No Monitoring	6
	Confidentiality.....	6
	District Policy.....	8
	Governmental Record	10
	Operation of Camera	10
	Exclusions	11
	Dispute Resolution	11
	Denial of Request.....	11
	Extension of Time.....	14

**Parental Consent
Not Required**

An employee of a district is not required to obtain the consent of a child's parent before the employee may make a videotape of a child or authorize the recording of a child's voice if the videotape or voice recording is to be used for a purpose related to the promotion of student safety under Education Code 29.022. *Education Code 26.009(b)*

**Video Surveillance of
Special Education
Settings**

In order to promote student safety, on receipt of an authorized written request, a district shall provide equipment, including a video camera, to the campus in the district specified in the request.

**Classroom or Other
Setting**

A campus that receives equipment shall place, operate, and maintain one or more video cameras in self-contained classrooms and other special education settings in which a majority of the students in regular attendance are provided special education and related services and are assigned to one or more self-contained classrooms or other special education settings for at least 50 percent of the instructional day, provided that:

1. A campus that receives equipment as a result of the request by a parent or staff member is required to place equipment only in classrooms or settings in which the parent's child is in regular attendance or to which the staff member is assigned, as applicable; and
2. A campus that receives equipment as a result of the request by a board of trustees, principal, or assistant principal is required to place equipment only in classrooms or settings identified by the requestor, if the requestor limits the request to specific classrooms or settings subject to Education Code 29.022.

Education Code 29.022(a)

Definitions

"Incident" means an event or circumstance that:

Incident

1. Involves alleged "abuse" or "neglect," as described in Family Code 261.001, of a student by a staff member of the district or alleged "physical abuse" or "sexual abuse," as described in Family Code 261.410, of a student by another student; and
2. Allegedly occurred in a self-contained classroom or other special education setting in which video surveillance under Education Code 29.022 and 19 Administrative Code 103.1301 is conducted.

*Other Special
Education Setting*

"Other special education setting" means a classroom on a separate campus (i.e., a campus that serves only students who receive special education and related services) of a district—including a room attached to the classroom or setting used for time-out—in which a

majority of the students in regular attendance are provided special education and related services, are assigned to the setting for at least 50 percent of the instructional day, and have one of the following instructional arrangements/settings described in the student attendance accounting handbook:

1. Residential care and treatment facility—separate campus; or
2. Off home campus—separate campus.

Parent

“Parent” means a person described in Education Code 26.002, whose child receives special education and related services in one or more self-contained classrooms or other special education settings. “Parent” also means a student who receives special education and related services in one or more self-contained classrooms or other special education settings and who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Family Code, Chapter 31, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order.

School Business Day

“School business day” means a day that campus or district administrative offices are open.

Self-contained Classroom

“Self-contained classroom” means a classroom on a regular campus (i.e., a campus that serves students in general education and students in special education), including a room attached to the classroom used for time-out, but not including a classroom that is a resource room instructional arrangement under Education Code 48.102, in which a majority of the students in regular attendance are provided special education and related services for at least 50 percent of the instructional day and have one of the following instructional arrangements/settings described in the student attendance accounting handbook:

1. Self-contained (mild/moderate/severe) regular campus;
2. Full-time early childhood (preschool program for children with disabilities) special education setting;
3. Residential care and treatment facility—self-contained (mild/moderate/severe) regular campus;
4. Residential care and treatment facility—full-time early childhood special education setting;
5. Off home campus—self-contained (mild/moderate/severe) regular campus; or
6. Off home campus—full-time early childhood special education setting.

<i>Staff Member</i>	“Staff member” means a teacher, a related service provider, a paraprofessional, a counselor, or an educational aide assigned to work in the self-contained classroom or other special education setting.
<i>Time-out</i>	“Time-out” has the meaning assigned by Education Code 37.0021.
<i>Video Camera</i>	“Video camera” means a video surveillance camera with audio recording capabilities.
<i>Video Equipment</i>	“Video equipment” means one or more video cameras and any technology and equipment needed to place, operate, and maintain video cameras as required by Education Code 29.022 and 19 Administrative Code 103.1301. “Video equipment” also means any technology and equipment needed to store and access video recordings as required. <i>19 TAC 103.1301(b); Education Code 29.022</i>
<i>Administrative Coordinator</i>	Each district shall designate an administrator at the primary administrative office of the district with responsibility for coordinating the provision of equipment to schools and campuses. <i>Education Code 29.022(a-2)</i>
<i>Authorized Requestors</i>	The following people may request in writing that equipment be provided to a campus at which one or more children receive special education services in a qualifying classroom or setting: <ol style="list-style-type: none">1. A parent of a child who receives special education services for the campus at which the child receives those services;2. The board of trustees for one or more specified campuses;3. The principal or assistant principal for their campus; and4. A staff member assigned to work with one or more children receiving special education services for the campus at which the staff member works. <i>Education Code 29.022(a-1)</i>
<i>Processing the Request</i>	A written request must be submitted and acted on as follows: <ol style="list-style-type: none">1. A parent, staff member, or assistant principal must submit a request to the principal or the principal's designee of the campus addressed in the request, and the principal or designee must provide a copy of the request to the district's designated administrator;2. A principal must submit a request by the principal to the district's designated administrator; and

3. A board of trustees must submit a request to the district's designated administrator, and the administrator must provide a copy of the request to the principal or the principal's designee of the campus addressed in the request.

A campus shall operate and maintain the camera in the classroom or setting as long as the classroom or setting continues to satisfy these requirements, for the remainder of the school year in which the campus received the request, unless the requestor withdraws the request in writing.

Education Code 29.022(a-3)-(b)

Video Camera
Coverage

The video cameras must be capable of:

1. Covering all areas of the classroom or setting, including a room attached to the classroom or setting used for time-out; and
2. Recording audio from all areas of the classroom or setting, including a room attached to the classroom or setting used for time-out.

The inside of a bathroom or any area in the classroom or other special education setting in which a student's clothes are changed may not be visually monitored, except for incidental coverage of a minor portion of a bathroom or changing area because of the layout of the classroom or setting.

Education Code 29.022(c)-(c-1)

Written Notice

Before a campus activates a video camera in a classroom or special education setting, the campus shall provide written notice of the placement to all campus staff and to the parents of each student attending class or engaging in school activities in the classroom or setting.

If for any reason a campus will discontinue operation of a video camera during a school year, not later than the fifth school day before the date the operation of the video camera will be discontinued, the campus must notify the parents of each student in regular attendance in the classroom or setting that operation of the video camera will not continue unless requested by a person eligible to make a request. Not later than the tenth school day before the end of each school year, the campus must notify the parents of each student in regular attendance in the classroom or setting that operation of the video camera will not continue during the following school year unless a person eligible to make a request for the next school year submits a new request.

Education Code 29.022(b), (d)

SPECIAL EDUCATION
VIDEO/AUDIO MONITORING

EHBAF
(LEGAL)

Retention Period A district shall retain video recorded from a video camera for at least three months after the date the video was recorded.

If a person requests to view a video recording from a video camera, a district must retain the recording from the date of receipt of the request until the person has viewed the recording and a determination has been made as to whether the recording documents an alleged incident. If the recording documents an alleged incident, the district or campus shall retain the recording until the alleged incident has been resolved, including the exhaustion of all appeals.

Education Code 29.022(e)–(e-1)

Gifts, Grants, and Donations A district may solicit and accept gifts, grants, and donations from any person to implement the requirements of Education Code 29.022 and 19 Administrative Code 103.1301. A district is not permitted to use Individuals with Disabilities Education Act, Part B, funds or state special education funds to implement these requirements. *19 TAC 103.1301(d)*

No Waiver of Immunity The requirements described by Education Code 29.022 do not:

1. Waive any immunity from liability of a district, or of district officers or employees; or
2. Create any liability for a cause of action against a district or against district officers or employees.

No Monitoring A district may not:

1. Allow regular or continual monitoring of video recorded under Education Code 29.022; or
2. Use video for teacher evaluation or for any other purpose other than the promotion of safety of students receiving special education services.

Education Code 29.022(g)–(h)

Confidentiality A video recording of a student made under this provision is confidential and may not be released or viewed except as provided below.

Limited Release A district shall release a recording for viewing by:

1. An employee who is involved in an alleged incident that is documented by the recording and has been reported to the district, on request of the employee;
2. A parent of a student who is involved in an alleged incident that is documented by the recording and has been reported to the district or campus, on request of the parent;

3. Appropriate Department of Family and Protective Services (DFPS) personnel as part of an investigation of alleged or suspected abuse or neglect of a child under Family Code 261.406;
4. A peace officer, a school nurse, a district administrator trained in de-escalation and restraint techniques as provided by commissioners rule, or a human resources staff member designated by the board in response to a report of an alleged incident or an investigation of district personnel or a report of alleged abuse committed by a student; or
5. Appropriate agency or State Board for Educator Certification personnel or agents as part of an investigation.

A contractor or employee performing job duties relating to the installation, operation, or maintenance of video equipment or the retention of video recordings who incidentally views a video recording does not violate these confidentiality provisions.

Education Code 29.022(i)–(i-1); 19 TAC 103.1301(h)–(i)

Duty to Report

If a person described by item 4 or 5, above, views a video recording and has cause to believe that the recording documents possible abuse or neglect of a child under Family Code Chapter 261, the person must submit a report to the Texas Department of Family and Protective Services or other authority in accordance with the local policy adopted under 19 Administrative Code 61.1051 (Reporting Child Abuse and Neglect) and Family Code Chapter 261 [see FFG].

19 TAC 103.1301(j); Education Code 29.022(j)

*Use in
Disciplinary
Actions Against
District Personnel*

If a person described by items 3, 4, or 5, above, views the recording and believes that it documents a possible violation of district or campus policy, the person may allow access to the recording to appropriate legal and human resources personnel of the district to the extent not limited by the Family Educational Rights and Privacy Act (FERPA) or other law. A recording believed to document a possible violation of district policy relating to the neglect or abuse of a student may be used in a disciplinary action against district personnel and must be released in a legal proceeding at the request of a parent of the student involved in the incident documented by the recording. A recording believed to document a possible violation of district policy relating to the neglect or abuse of a student must be released for viewing by the district employee who is the subject of the disciplinary action at the request of the employee. *19 TAC 103.1301(k)*

*Federal Law /
FERPA*

19 Administrative Code 103.1301(j) (child abuse reporting) and (k) (disciplinary actions against personnel) do not limit the access of a student's parent to a record regarding the student under FERPA or other law. To the extent any provisions in Education Code 29.022 and 19 Administrative Code 103.1301 conflict with FERPA or other federal law, federal law prevails. *19 TAC 103.1301(l)*

District Policy

A district must adopt written policies relating to the placement, operation, and maintenance of video cameras under Education Code 29.022 and 19 Administrative Code 103.1301. At a minimum, the policies must include:

1. A statement that video surveillance is for the purpose of promoting student safety in certain self-contained classrooms and other special education settings;
2. Information on how a person may appeal an action by the district that the person believes to be in violation of this section or a policy adopted in accordance with this section, including the appeal and expedited review processes under 19 Administrative Code 103.1303 of this title (Commissioner's Review of Actions Concerning Video Cameras in Special Education Settings) and the appeals process under Education Code 7.057;
3. A requirement that the district provide a response to a request made under this section not later than the seventh school business day after receipt of the request by the person to whom it must be submitted under Education Code 29.022(a-3) (at Limited Release, above) that authorizes the request or states the reason for denying the request;
4. Except as provided by item 6 of this provision, a requirement that a campus begin operation of a video camera in compliance with this provision not later than the 45th school business day, or the first school day after the 45th school business day if that day is not a school day, after the request is authorized unless the Texas Education Agency (TEA) grants an extension of time;
5. A provision permitting the parent of a student whose admission, review, and dismissal (ARD) committee has determined that the student's placement for the following school year will be in a classroom or other special education setting in which a video camera may be placed under this section to make a request for the video camera by the later of:
 - a. The date on which the current school year ends; or

student's clothes are changed is permitted only to the extent that such coverage is the result of the layout of the classroom or setting. Audio recording of the inside of a bathroom or any area of the classroom or other special education setting in which a student's clothes are changed is required;

13. A statement that video recordings must be retained for at least three months after the date the video was recorded and that video recordings will be maintained in accordance with the requirements of Education Code 29.022(e-1), when applicable;
14. A statement that the regular or continual monitoring of video is prohibited and that video recordings must not be used for teacher evaluation or monitoring or for any purpose other than the promotion of student safety;
15. At the district's discretion, a requirement that campuses post a notice at the entrance of any self-contained classroom or other special education setting in which video cameras are placed stating that video and audio surveillance are conducted in the classroom or setting;
16. The procedures for reporting an allegation to the district that an incident occurred in a self-contained classroom or other special education setting in which video surveillance under Education Code 29.022 and 19 Administrative Code 103.1301 is conducted;
17. The local grievance procedures for filing a complaint alleging violations of Education Code 29.022, and/or 19 Administrative Code 103.1301; and
18. A statement that video recordings made under Education Code 29.022 and 19 Administrative Code 103.1301 are confidential and a description of the limited circumstances under which the recordings may be viewed.

19 TAC 103.1301(g)

Governmental
Record

A video recording under this section is a governmental record only for purposes of Penal Code 37.10.

Operation of
Camera

These provisions apply to the placement, operation, and maintenance of a video camera in a self-contained classroom or other special education setting during the regular school year and extended school year services.

A video camera placed under this section is not required to be in operation for the time during which students are not present in the classroom or other special education setting.

Education Code 29.022(s)–(t)

Exclusions	A district is not required to provide video equipment to a campus of another district or charter school or to a nonpublic school. <i>19 TAC 103.1301(c)</i>
Dispute Resolution	The special education dispute resolution procedures in 34 Code of Federal Regulations 300.151–.153 and 300.504–.515 do not apply to complaints alleging that a district has failed to comply with Education Code 29.022 and 19 Administrative Code 103.1301. Complaints alleging violations of those sections must be addressed through the district’s local grievance procedures or other dispute resolution channels. <i>19 TAC 103.1301(e)</i>
Denial of Request	The following standards and procedures apply to a denial of a request for placement of a video camera under Education Code 29.022(a), or to the denial of a request to release a video or to view a video made under Education Code 29.022(i) or (l)(2).
<i>Exhaustion of Administrative Remedies</i>	Once a request for placement of a video camera or a request to release a video is administratively denied, the requester must exhaust administrative remedies through the district’s grievance process even if the requester opts for the expedited review process. However, a district, parent, staff member, or administrator may request an expedited review even before the local remedies are exhausted. After local remedies are exhausted by filing a grievance with the board and obtaining a board determination, the requester may appeal the denial to the commissioner of education under Education Code 7.057 by filing a petition for review.
<i>Proper Request</i>	In a case where there is a denial of a request for the placement of a video camera, the commissioner will determine whether the person requesting placement is a person allowed to request placement under Education Code 29.022(a-1) [see Limited Release, above] and whether the requester made a proper request under Education Code 29.022(a-3) [see Processing the Request, above].
<i>Cost</i>	The commissioner will not consider the cost to the district of installing cameras or releasing video.
<i>Release Determination</i>	In a case where there is a denial of a request to release a video, the commissioner will determine whether the requester is a person allowed to receive a video under Education Code 29.022(i) [described at Limited Release, above].

*Timelines for
Petition for
Review*

The following timelines are established for filing a petition for review:

1. A petition for review shall be filed with the commissioner within ten calendar days of the decision of the board denying the request being first communicated to the requester or requester's counsel, whichever occurs first. The petition for review shall be made in accordance with 19 Administrative Code 157.1073(c) (hearings brought under Education Code 7.057) and may include a request for expedited review.
2. The district's answer and local record shall comply with 19 Administrative Code 157.1052(b) and (c) and 19 Administrative Code 157.1073(d) and shall be filed with the commissioner within ten calendar days of the district receiving notification from the commissioner of the appeal.
3. The procedures specified in 19 Administrative Code 157.1059; .1061; and .1073(e)–(h), (j), and (k) apply to a case brought to the commissioner under this section.

*Expedited
Review*

A request for expedited review is governed by the following.

1. The expedited review process is designed to allow a requester to promptly receive a preliminary judgment from the commissioner as to a decision to deny a request for the installation of cameras or a decision to deny a request to release a video while at the same time respecting the school grievance process. The expedited review process does not apply to a request to only view a video. Invoking the expedited review process results in a prompt initial determination. However, the final commissioner's determination is to be based on a substantial evidence review of the district's grievance record. This allows for a full record to be developed at the district level and does not require the requester and the district to make an evidentiary record before TEA in Austin, Texas. Because the requirements of Education Code 7.057 are met when the board's decision is heard by the commissioner, an appeal to district court is allowed under Education Code 7.057(d). Education Code 29.022 does not by itself allow an appeal to district court.
2. A district, parent, staff member, or administrator may request an expedited review. Any request for an expedited review shall include the names, telephone numbers, and addresses of all interested parties to the request. "Interested parties" are all persons who brought the grievance, all persons who have testified or provided written statements as part of the grievance process.

ance process, and the district. The request for expedited review shall specify whether the district denied a request for the placement of a video camera or the district denied a request to release a video and briefly describe why that decision is either correct or incorrect.

3. A request for expedited review shall be filed with the commissioner no earlier than 14 business days after a request for placement of a video camera or a request to release a video is administratively denied under Education Code 29.022(i) or (l)(2) [see Limited Release and Process, above], and no later than the fifth business day after a board resolves a grievance as to a request for placement of a video camera or a request to release a video. A request for expedited review shall be filed with the commissioner by U.S. Mail, facsimile, hand-delivery, or by a commercial delivery service.
4. Whenever an interested party files a document with the commissioner, with the exception of the request for expedited review, the interested party shall send the same document to all other interested parties by the same method that the document was sent to the commissioner. Hand-delivery of the document by the next day may be substituted for service by facsimile delivery.
5. If a request for expedited review is timely filed, the commissioner will establish a briefing schedule and will send to all interested parties a notice that an expedited review has been filed, which will include relevant statutes and rules. Any interested party who knows of any additional interested parties who have not been notified will promptly inform the commissioner in writing.
6. All briefing shall clearly state the facts relied upon. Documents relevant to the issues presented may be attached to a brief. All briefing shall provide the reasons why the commissioner should or should not grant the request for expedited review. Citations to statutes, rules, commissioner decisions, and case law are important to identify the legal basis for the claims made.
7. All interested parties who are in favor of granting the request for expedited review shall file briefing at the time specified for the requester of the expedited review.
8. All interested parties who are opposed to granting the request for expedited review shall file briefing at the same time.

9. Briefing is not limited to the issues specifically raised in the pleadings in the case. However, no new arguments may be raised in the reply briefs. Reply briefs may contain new citations to the record and legal authority as to issues previously raised.
10. A preliminary judgment shall be issued based on the briefing of the interested parties. The preliminary judgment will be sent to the requestor, the district, and all interested parties. If it is determined that a district is not likely to prevail on the issue of a request for the placement of video cameras or the issue of a request to view a video under full review, the district will fully comply with Education Code 29.022.
11. After a preliminary judgment is made, a final judgment will be made in accordance with the procedures set forth in 19 Administrative Code 103.1303(b)(1)–(5) (the Denial of Request Review process).

19 TAC 103.1303(b)

Extension of Time

A request by a district for an extension of time to begin the operation of a video camera under Education Code 29.022 shall be made and decided using the following procedures.

Request

Any request by a district for an extension of time to begin the operation of a video camera shall be filed with the commissioner prior to the 45th school business day after a request to begin operating a video camera is received. However, a district should request an extension of time as soon as it determines that an extension of time should be filed.

A request for an extension of time to begin the operation of a video camera shall specify why an extension of time should be granted. The request shall include affidavits supporting any factual claims made in the request and reference any legal authority as to why the request should be granted. The request may include a request for expedited review. The request shall name the individual who requested the installation of cameras and provide the individual's address and telephone number. Immediately following the individual's address and telephone number there shall appear in bold type: "You have been identified as the individual who requested the operation of a video camera that is the subject of this request to the commissioner of education to extend the statutory timeline. You may, but are not required to, participate in the proceedings before the commissioner concerning the school district's request for an extension of time. It is entirely up to you whether and to what extent you wish to participate in these proceedings. The procedures

governing these proceedings are found at 19 Texas Administrative Code 103.1303(c) and Texas Education Code 29.022.”

A request for an extension of time to begin the operation of a video camera shall list the names, telephone numbers, and addresses of all interested parties to the request. All interested parties include all parents of students in the classroom or other special education setting for which a video camera has been requested and all staff who provided services in a classroom for which a video camera has been requested.

Filing Documents All documents in a case shall be filed with the Division of Hearings and Appeals, Texas Education Agency, 1701 N. Congress Ave., Austin, Texas 78701, facsimile number (512) 475-3662. Documents can be filed by mail, delivery, or facsimile. All documents must be actually received by the Division of Hearings and Appeals by the date specified in this section. The mailbox rule does not apply to filings in a case filed under this subsection. Filing by facsimile is strongly encouraged.

All filings in a case shall be sent to the district, the individual who initially requested the installation of the cameras, and all interested parties who have filed a request to receive documents filed in the case by the same method as the request is filed with the commissioner. Due to the requirements of FERPA, the names, telephone numbers, and addresses of parents and other publicly identifiable student information may not be given to the interested parties. The copies of the filings sent to interested parties shall be redacted to remove all personally identifiable student information.

Filing Responses Any response to a request for an extension of time to begin the operation of a video camera shall be filed with the commissioner by an interested party within ten calendar days of the filing of the request. If no response to the request is timely filed, the commissioner shall issue a final decision within 20 calendar days of the filing of the request.

A response to a request for an extension of time to begin the operation of a video camera shall specify why an extension of time should or should not be granted. The response shall include affidavits concerning any factual claims made in the request and reference any legal authority as to why the request should or should not be granted. The response may include a request for expedited review.

Expedited Review A request for expedited review must be filed with the commissioner within ten calendar days of the filing of the request for an extension of time to begin the operation of a video camera. If a request for expedited review is made, all interested parties shall be notified

that they have been identified as interested parties in the request for an extension of time to begin the operation of a video camera. In particular, the interested parties will be informed that it is their choice whether to participate in the proceedings before the commissioner, that it is entirely up to them to determine to what extent they wish to participate in the proceedings, that the procedures governing these proceedings are found in 19 Administrative Code 103.1303 and Education Code 29.022, and that upon their written request filed with the commissioner they will be sent all filings in this case.

If a request for an expedited review is not made, the commissioner shall issue a final decision within 45 calendar days of the filing of the request for an extension of time to begin the operation of a video camera, unless the commissioner determines that an evidentiary hearing would be helpful in deciding the issues raised. If the commissioner decides to hold an evidentiary hearing, the commissioner shall establish the timelines and procedures to be used. Whether to conduct the hearing by telephone or other electronic methods will be considered.

If a request for expedited review is made, the following procedures shall be followed:

1. Any reply by the district to any response to the request shall be filed with the commissioner within 25 calendar days of the filing of the request for an extension of time to begin the operation of a video camera.
2. A preliminary judgment shall be made by the commissioner within 35 calendar days of the filing of the request for an extension of time to begin the operation of a video camera.
3. Any interested party or the district may file objections to the preliminary judgment within 40 calendar days of the filing of the request for an extension of time to begin the operation of a video camera.
4. Any reply to an objection to a preliminary judgment must be filed within 45 calendar days of the filing of a request for an extension of time to begin the operation of a video camera.
5. The commissioner shall issue a final decision within 55 calendar days of the filing of the request for an extension of time to begin the operation of a video camera, unless the commissioner determines that an evidentiary hearing would be helpful in deciding the issues raised. If the commissioner decides to hold an evidentiary hearing, the commissioner shall estab-

lish the timelines and procedures to be used. Whether to conduct the hearing by telephone or other electronic methods will be considered.

*Commissioner
Consideration*

In making either a preliminary judgment or a final judgment under this subsection, the commissioner will consider whether granting the requested extension is reasonable considering all factors, including contracting statutes, architectural and structural issues, and the difference in costs to the district if a moderate extension of time is granted.

No Appeal

A commissioner's final decision under this provision is not subject to appeal.

19 TAC 103.1303(c)